IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LYNNETTE J. MERRICK,	:	
	:	1:12-cv-1878
Plaintiff,	:	
	:	Hon. John E. Jones III
v.	:	
	:	
POLICE CHIEF WESLEY A.	:	
KAHLEY, *et al.*,	:	Hon. Susan E. Schwab
	:	
Defendants.	:	

MEMORANDUM

June 3, 2013

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This matter is before the Court on the Report and Recommendation

("R&R") of Magistrate Judge Susan E. Schwab (Doc. 13), filed on May 10, 2013,

which recommends that Defendants' Motions to Dismiss (Doc. 4) be granted and

that *pro se* Plaintiff Lynnette J. Merrick's ("Plaintiff' or "Merrick") complaint be

dismissed. Objections to the R&R were due by May 28, 2013, and to date none

have been filed.   Accordingly, this matter is ripe for disposition. For the reasons

set forth below, the Court will adopt the Magistrate Judge's R&R in its entirety and

close this case.

I.   STANDARD OF REVIEW

When, as here, no objections are made to a magistrate judge's report and

recommendation, the district court is not statutorily required to review the report

before accepting it. *Thomas v. Arn,* 474 U.S. 140, 149 (1985). According to the

Third Circuit, however, "the better practice is to afford some level of review to

dispositive legal issues raised by the report." *Henderson v. Carlson*, 812 F.2d 874,

878 (3d Cir. 1987). "[T]he court need only satisfy itself that there is no clear error

on the face of the record in order to accept the recommendation." Fed. R. Civ. P.

72(b), advisory committee notes; *see also Henderson*, 812 F.2d at 878-79 (stating

"the failure of a party to object to a magistrate's legal conclusions may result in the

loss of the right to de novo review in the district court"); *Tice v. Wilson,* 425 F.

Supp. 2d 676, 680 (W.D. Pa. 2006); *Cruz v. Chater,* 990 F. Supp. 375-78 (M.D.

Pa. 1998); *Oldrati v. Apfel,* 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998). The Court's

examination of this case confirms the Magistrate Judge's determinations.

II.   DISCUSSION

In July of 2011, Merrick was arrested and charged with various crimes

related to thefts from residents at an assisted-living facility where she was

employed part-time.[1] Plaintiff alleges that the arresting officers disclosed her

arrest and the charges against her to her full-time employer, the Social Security

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[1] Magistrate Judge Schwab undertook an exhaustive description of the investigation of
Merrick's involvement vis-a-vis the thefts at Kelly Manor assisted living facility, thus we shall
not repeat the same herein, but rather shall refer the reader to pages 2 through 10 of the R&R,
which is attached hereto.

Administration ("SSA"), and as a result of that disclosure she was suspended

without pay for more than five months. On April 12, 2012, all charges against

Plaintiff were dismissed by the York County Court of Common Pleas, however

Plaintiff was assessed a penalty and costs pursuant to Pa. R. Crim. P. 586. Plaintiff

contends that the Defendants violated the Privacy Act and her right to privacy by

disclosing this information to the SSA. She also asserts claims for malicious

prosecution, defamation, and interference with a business relationship.   As

noted above, within her thorough and well-reasoned 30-page R&R, Magistrate

Judge Schwab recommends that Defendants' Motion to Dismiss be granted.

Specifically, the Magistrate Judge correctly determines that Merrick has not stated

a cognizable claim against the Privacy Act, 5 U.S.C. § 552A(b), because the

Defendants are not federal agencies, thus the Privacy Act does not apply to them.

Next, the Magistrate Judge correctly concludes that Plaintiff did not have a

constitutionally protected privacy interest in the non-disclosure of the police report

and related documents. *Nunez v. Pachman*, 578 F. 3d 228, 233 (3d Cir.

2009)("criminal records, including police reports, indictments, guilty verdicts, and

guilty pleas, are inherently public - not private - documents and are thus beyond

the purview of the Due Process Clause.").   Thus, as reasoned by Magistrate Judge

Schwab, while Merrick might have hoped and had a subjective expectation that her

arrest would not be disclosed to her employer, the type of documents that Merrick

alleges the Defendants disclosed to the SSA are not the type of documents

protected by the constitutional right to privacy.

Further, the Magistrate Judge reasons, and we agree, that Plaintiff's

malicious prosecution claim is not cognizable because one of the essential elements

is lacking - that the criminal proceeding ended in the plaintiff's favor. *See*

McKenna v. Philadelphia, 582 F. 3d 447, 461 (3d Cir. 2009). Favorable

termination of a criminal proceeding means that the suit must have been terminated

in a way that indicates the innocense of the Plaintiff. *See Kossler v. Crisanti*, 564

F. 3d 181, 187 (3d Cir. 2009). Here, while the charges were dismissed against

Merrick, they were dismissed pursuant to Pa. R. Crim. P. 586, which predicates

dismissal on the payment of a penalty and costs. Thus, the dismissal in the case

was *not* indicative of Merrick's innocence, and thus she cannot establish the

elements of a malicious prosecution claim.

Finally, the Magistrate Judge recommends that the Defendants' Motion be

granted as to the supervisory Defendants as well as the City of York because

Plaintiff has not set forth any facts to support a cognizable claim for supervisory or

municipal liability. Further, as discussed above, Plaintiff did not have a privacy

interest in the documents given to the SSA by the arresting officer Defendants, thus

Plaintiff's failure to train claim with respect to these allegations necessarily fails.

As we have already mentioned, the Plaintiff has not filed objections to this R&R. Because we agree with the sound reasoning that led the Magistrate Judge to the conclusions in the R&R, we will adopt the R&R in its entirety. With a mind towards conserving judicial resources, we will not rehash the reasoning of the Magistrate Judge; rather, we will attach a copy of the R&R to this document, as it accurately reflects our consideration and resolution of the case *sub judice*. An appropriate Order shall issue.